



## STATEMENT OF THE CASE

Defendant-Appellant Elliott Scott Stapleton appeals the trial court's denial of credit toward his sentence.

We reverse and remand with instructions.

## ISSUE

Stapleton raises one issue for our review, which we restate as: whether the trial court erred in denying credit for time served while he was in a drug court program.

## FACTS AND PROCEDURAL HISTORY

On May 10, 2002, the State charged Stapleton with six counts of drug-related offenses. Stapleton pleaded guilty to all six counts, and the trial court imposed an eighteen-month sentence. The sentence was suspended, and Stapleton was placed on probation.

On July 10, 2003, the State filed a notice of probation violation, and Stapleton admitted the violation and agreed to enter a program administered by the Madison County Drug Court. Stapleton later withdrew from the program, and on October 12, 2004, the State filed a second notice of probation violation.

At the July 26, 2005, probation hearing, Stapleton testified that he spent 15 days in jail from September 24, 2002 to October 8, 2002; 53 days in jail from January 9, 2004 to March 3, 2004; 49 days from March 31, 2004 to May 19, 2004; 116 days from October 13, 2004 to January 27, 2005; and 54 days from June 2, 2005 to July 26, 2005. Stapleton further testified that the total time of incarceration was 287 days, and he requested the court to award him good time credit for a total of 574 days (2 x 287) pursuant to Ind.

Code § 35-50-6-3. The trial court sentenced Stapleton to 18 months in the Department of Correction and denied Stapleton's request for 574 days, instead stating that he was entitled to 218 days (2 x 109) against his sentence. Stapleton now appeals.

### DISCUSSION AND DECISION

In denying Stapleton's request for 574 days against his sentence, the trial court reasoned that Stapleton should not get credit for the time spent in jail or work release during his participation in the drug court program. Stapleton contends that the issue is one of statutory interpretation and that he is entitled to additional time served and good time credit under Ind. Code § 35-50-6-3.<sup>1</sup>

The State argues that Stapleton waived his right to time served and good time credit when he agreed to participate in the drug court program. The State analogizes Stapleton's agreement to a guilty plea agreement whereby a defendant contractually agrees to give up certain rights in exchange for a favorable outcome. *See Pannarale v. State*, 638 N.E.2d 1247, 1248 (Ind. 1994) (holding that "defendants who plead guilty to achieve favorable outcomes give up a plethora of substantive claims and procedural rights").

The State asserts that Stapleton waived time served and good time credit when he signed the drug program agreement. The State specifically points to provisions in the agreement stating that if Stapleton failed to finish the program (1) sentencing would be

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<sup>1</sup> A person "imprisoned for a crime or imprisoned awaiting trial or sentencing is initially assigned to Class I." Ind. Code § 35-50-6-4(a). Stapleton was never reassigned to a lower class. Ind. Code § 35-50-6-3 provides that "[a] person assigned to Class I earns one (1) day of credit time for each day he is imprisoned for a crime or confined awaiting trial or sentencing." Furthermore, a probationer assigned to Class I is entitled to credit for time served in a work release program. *See Senn v. State*, 766 N.E.2d 1190, 1202 (Ind. Ct. App. 2002).

reset and (2) any delays would be charged to Stapleton. Neither of these provisions, however, evinces a waiver by Stapleton of his right to time served or good time credit under Ind. Code § 35-50-6-3. Thus, this case is distinguishable from *Pannarale*.

### CONCLUSION

Stapleton did not waive credit for time served or good time credit under Ind. Code § 35-50-6-3. Accordingly, we reverse and remand with instructions that the trial court vacate its judgment and award Stapleton 574 days of credit against his sentence.

Reversed and remanded with instructions.

KIRSCH, C.J., and SHARPNACK, J., concur.